

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, et al.

Plaintiff

v.

Case No. 05-CV-329-GKF-SAJ

TYSON FOODS, INC., et al.,

Defendants

**TYSON DEFENDANTS' RESPONSE
TO THE STATE OF OKLAHOMA'S OPPOSED MOTION FOR EXTENSION OF
TIME TO COMPLY WITH THE COURT'S ORDER OF FEBRUARY 26, 2007
(DKT. NO. 1063)**

Defendants Tyson Foods, Inc., Tyson Chicken, Inc., Tyson Poultry, Inc. and Cobb-Vantress, Inc. (referred to hereinafter as "Tyson Defendants") hereby Respond to Plaintiffs' Motion for Extension of Time to Comply with the Court's Order of February 26, 2007 (DKT. NO. 1063) (the "Motion").

Plaintiffs contend in their Motion that the Tyson Defendants' placed "unacceptable conditions" upon consenting to their request for an additional 30 days to comply with the Court's Order of February 26, 2007 (DKT. NO. 1063) (the "February 26, 2007 Order"). However, Plaintiffs fail to set forth in the Motion the conditions which they blithely characterize as "unacceptable". In fact, the Tyson Defendants were willing to consent to Plaintiffs' request for an additional 30 days provided that Plaintiffs would agree to two conditions designed to avoid further prejudice to the Tyson Defendants.

During a telephone conference on March 20, 2007, Plaintiffs sought a number of concessions from the Tyson Defendants, one of which was acquiescence to a 30-day extension for Plaintiffs to comply with this Court's February 26, 2007 Order. On March 21, 2007, the Tyson Defendants had a second telephone conference with Plaintiffs' counsel. With regards to the requested 30-day extension for Plaintiffs to comply with the February 26, 2007 Order, the

Tyson Defendants advised Plaintiffs they would acquiesce to the extension, provided that Plaintiffs agree to: 1) comply with the terms of the February 26, 2007 Order and 2) agree to a 30-day extension for the Tyson Defendants to respond to Plaintiffs' expert reports on the issues of injury and causation thereby adjusting that Scheduling Order (DKT. NO. 1075) deadline for the Tyson Defendants responses to Plaintiffs' expert reports from February 1, 2008 to March 2, 2008. Plaintiffs' counsel said they would consider the proposal and advise shortly. On the afternoon of March 21, 2007, Plaintiffs' counsel advised the Tyson Defendants that they could not accept the proposal and said they would seek relief from the Court. Plaintiffs provided no reason for their decision and did not offer any other proposal.

The first "condition" requested by the Tyson Defendant's can hardly be characterized as "unacceptable". It simply requested the Plaintiffs to do what this Court has already ordered them to do. Ordinarily, this request would seem unnecessary, but given the fact that the Plaintiffs already failed to comply with part of the February 26, 2007 Order, the Tyson Defendants felt this was necessary. Specifically, just last week, as part of the deposition of the records custodian for the Office of the Oklahoma Secretary of the Environment on March 15, 2007, Plaintiffs made a large number of FRCP 33(d) designations through another unverified index without identifying the documents by bates number and box number as required by the February 26, 2007 Order.

The second "condition" requested by the Tyson Defendants was not "unacceptable" either. The Tyson Defendants' advised Plaintiffs that Plaintiffs' responses to the interrogatories are an important part of their defense to this case. The Tyson Defendants served the interrogatories on May 2, 2006 and still have not received adequate answers from Plaintiffs. With the 30 day extension, Plaintiffs will have taken nearly one year correctly to respond to the Tyson Defendants' interrogatories. This delay is becoming increasingly prejudicial to the Tyson Defendants' preparation of their defense in this case. Thus, the Tyson Defendants' sought a

concomitant 30-day extension in the scheduling order which would not affect any other dates set in this case. Specifically, the Tyson Defendants requested 30 additional days to respond to Plaintiffs' expert reports on the issues of injury and causation. An additional 30 days for the Tyson Defendants to respond to expert reports is reasonable given that Plaintiffs will have taken nearly one year to respond to interrogatories, especially since the interrogatories directly relate to the crux of Plaintiffs' claims. The Tyson Defendants were willing to consent to Plaintiffs' request for an additional 30 days to comply with the Court's February 26, 2007 Order, subject only to these two conditions.

WHEREFORE, the Tyson Defendant's pray that this Court deny the relief requested by Plaintiff and order any and all other relief it deems necessary.

Respectfully Submitted,

By: /s/ Robert W. George

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CERTIFICATE OF SERVICE

I certify that on the 22nd day of March 2007, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

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